

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 3, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP464

Cir. Ct. No. 2000CF1679

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

SYLVESTER TOWNSEND,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
ELLEN R. BOSTROM, Judge. *Affirmed.*

Before Curley, Fine and Kessler, JJ.

¶1 PER CURIAM. Sylvester Townsend, *pro se*, appeals the circuit court order denying his fourth WIS. STAT. § 974.06 motion. The issue is whether Townsend's claims are barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). We conclude that they are barred. Therefore, we affirm.

¶2 In 2000, a jury found Townsend guilty of first-degree reckless homicide and two counts of first-degree recklessly endangering safety, all as a party to a crime. By his appointed lawyer, Townsend filed a direct appeal arguing that the State produced insufficient evidence to support the guilty verdicts. We summarily affirmed. *State v. Townsend*, No. 2002AP2941-CR, unpublished op. and order (WI App Nov. 11, 2003). Townsend's petition for review was denied.

¶3 In 2004, Townsend filed his first *pro se* WIS. STAT. § 974.06 motion. He argued: (1) there was no probable cause for his arrest; (2) the delay between his arrest and his initial appearance violated his constitutional rights; (3) the prosecutor presented evidence at trial that had no relevance to this case; (4) the prosecutor vouched for the credibility of the State's witnesses during closing arguments; (5) a Milwaukee police detective testified that he destroyed exculpatory evidence; and (6) his trial lawyer gave him constitutionally deficient representation when he failed to file a suppression motion and failed to object to alleged instances of prosecutorial misconduct. Townsend additionally alleged that his appellate lawyer gave him constitutionally deficient representation when he failed to raise these issues. After liberally construing Townsend's allegations and finding no substantive merit to his claims, the circuit court denied the motion. Townsend appealed, and we affirmed. *State v. Townsend*, No. 2004AP2123, unpublished slip op. (WI App June 14, 2005). Townsend's petition for review was denied.

¶4 In 2007, Townsend filed a second *pro se* WIS. STAT. § 974.06 motion. He argued: (1) the prosecutor engaged in misconduct for calling Townsend's wife to testify at his trial; and (2) his trial and appellate lawyers gave him constitutionally deficient representation by, respectively, failing to object to this testimony and failing to raise the issue in original postconviction and appellate

proceedings. The circuit court denied the motion after concluding that it was barred by *Escalona-Naranjo*. Townsend appealed, and we affirmed. *State v. Townsend*, No. 2008AP87, unpublished slip op. (WI App Dec. 30, 2008). Townsend's petition for review was denied.

¶5 In 2009, Townsend filed a third *pro se* WIS. STAT. § 974.06 motion. He argued that his trial lawyer gave him constitutionally defective representation when he failed to communicate a plea offer from the State. After briefing and an evidentiary hearing, the circuit court denied the motion on both procedural and substantive grounds. Townsend did not appeal this order.

¶6 In 2013, Townsend filed a fourth *pro se* WIS. STAT. § 974.06 motion. He argued that his trial and appellate lawyers gave him constitutionally deficient representation by, respectively, failing to call certain witnesses to testify at trial and failing to raise the issue in original postconviction and appellate proceedings. The circuit court denied the motion, and its order underlies this appeal.

¶7 The postconviction procedures of WIS. STAT. § 974.06 allow a defendant to attack his conviction after the time for appeal has expired. *See Escalona-Naranjo*, 185 Wis. 2d at 176, 517 N.W.2d at 160. There is, however, a limitation: an issue that could have been raised on direct appeal or by prior motion is barred from being raised in a subsequent postconviction motion absent a sufficient reason for not raising the issue earlier. *See State v. Lo*, 2003 WI 107, ¶44, 264 Wis. 2d 1, 22, 665 N.W.2d 756, 766. Townsend has not provided a sufficient reason for not raising his current claims in his three prior postconviction motions and direct appeal. Allowing “[s]uccessive motions and appeals, which all could have been brought at the same time” is prohibited by § 974.06 and

Escalona-Naranjo, which teaches that “[w]e need finality in our litigation.” *Id.*, 185 Wis. 2d at 185, 517 N.W.2d at 163.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

